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Written statement* submitted by Foundation ECPAT International (End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance w..h Economic and Social Council resolution 1996/31.

[13 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ECPAT International written statement on access to justice for CSEC victims

The Commercial Sexual Exploitation of Children (CSEC) is a growing problem, and although the true magnitude of the problem is hidden due to its sensitive and illegal nature, millions of children around the world are believed to be affected[1]. Manifestations of CSEC include child trafficking for sexual purposes, sexual exploitation in travel and tourism, child prostitution, and child pornography/child sexual abuse materials, a significant percentage of which now involve the Internet.

Access to justice for CSEC victims means ensuring that they have the right to an effective remedy for the harms caused to them by their abuse. For CSEC victims it is important that they are involved in the process of identifying and prosecuting the perpetrator; that they are compensated for the harms caused to them; and that they receive the psychosocial services necessary for their recovery. For victims of online child sex abuse identifying and prosecuting all of the perpetrators involved, including the producers, the viewers, and the distributors of the child abuse materials, is challenging and requires justice systems to adapt to the fast changing pace of technology.

The right to access to justice for CSEC victims is enshrined in international law, including the *1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*[2](the Basic Principles); the *Draft Basic Principles on the right to an effective remedy for trafficked persons* (the Draft Principles)[3]; and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)*.

In line with the current international legal framework outlined above, ECPAT International defines the right to access to justice for CSEC victims as the right to an effective remedy, consisting of three components:

1. The right to effective access to criminal justice (criminal law);
2. The right to recovery and reintegration (administrative law); and
3. The right to reparation (civil and criminal law).

1. The right to effective access to criminal justice

In a criminal law context, there is a need for child-friendly procedures for collecting evidence from CSEC victims; these procedures should be in place from the time they report the crime, to the time their evidence is given in court. In certain cases, the child may need access to effective witness protection, and where medical evidence is necessary it needs to be taken in a timely and sensitive manner. It is also important that child victims are not penalised by the justice system, which can happen if they are intentionally or unintentionally criminalised for their involvement in prostitution.

Article 8.1(a) of the OPSC requires State Parties to recognise and respond to the vulnerability of child victims. Resolution 2005/20 of the Economic and Social Council of the United Nations, entitled *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* (the ECOSOC Guidelines)[4] states that there is a need for child-sensitive procedures, including interview rooms designed for children, interdisciplinary services designed for child victims, and modified court environments[5].

[1] UNICEF, Child protection from violence, exploitation and abuse
[2] UN General Assembly, Sixtieth session, Resolution 16 December 2005
[3] DUN General Assembly 66th Session, note by the Secretary-General (A/66/283)
[4] Resolution 2005/20 of the Economic and Social Council
[5] http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf, Paragraph 30(d)

Criminalisation of trafficking victims is prohibited by the *Trafficking Principles and Guidelines 2002* (Guideline 5), the *2005 European Trafficking Protocol* (Article 26), and the *2011 European Trafficking Directive* (Article 8). The *UNODC Anti-human Trafficking Manual for Criminal Justice Practitioners* (the UNODC Manual) emphasises the need to ensure that all children under the age of 18 are legally regarded as such[6].

States should ensure that all CSEC victims under the age of 18 have the right to access child-friendly criminal justice systems.

2. The right to recovery and reintegration

All CSEC victims require extensive recovery services. This can include physical health services where the child has been physically abused and possibly exposed to HIV and other STDs; psychosocial support to address the trauma caused by the abuse[7]; and often assistance with reintegration where children have been removed from their families or communities. It is imperative that all CSEC victims receive these services as a legal right and this should not be dependent on whether a perpetrator has been identified; the immigration status of the child; or the child's willingness to cooperate with criminal legal proceedings. For victims of online child sexual abuse, the recovery process can be hindered by the perpetual presence of the child abuse materials online.

Article 9.3 of the OPSC requires State Parties to take all feasible measures to ensure appropriate assistance to CSEC victims, including their full social reintegration and their full physical and psychological recovery. The *1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* provides for the right to medical, psychological and social assistance[8].

Recovery and reintegration services for CSEC victims are a legal right. This means that when the duty bearers responsible for carrying out child protection assessments fail to meet the required legal standards, there is a need for an effective legal remedy for the child.

3. The right to reparation for CSEC victims

For child survivors of sexual exploitation, receiving adequate compensation is not only important to address the injuries and losses suffered, but also to fund the services needed for children to rebuild their lives and ensure they can successfully re-integrate into society.

Financial reparation by the State or by the offender is a fundamental right of CSEC victims. Article 9, Paragraph 4 of the OPSC requires State Parties to ensure that all CSEC victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible for their abuse. The UNODC Manual sets out the international legal basis for victim compensation, which includes: Article 25(2) of *the United Nations Convention against Transnational Organized Crime* (the UNTOC Convention) which requires State Parties to establish appropriate procedures to provide access to compensation and restitution for victims, and requires that this right be communicated to victims; Article 14 of the UNTOC Convention which requires State Parties to give priority consideration to returning confiscated proceeds of a crime or property to a requesting State Party so that it can give compensation to victims; and Article 6(6) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol) which requires State Parties to ensure their domestic legal systems contain measures that offer victims of trafficking the

[6] http://www.unodc.org/documents/human-trafficking/TIP_module9_Ebook.pdf, p.4.
[7] ECPAT, Psychosocial Rehabilitation of Children Who Have Been Commercially Sexually Exploited, 1999.
[8] At Paragraph 14.

possibility of obtaining compensation for damages suffered[9]. The *Draft Principles on the right to an effective remedy for trafficking victims* also specifically refer to the right to compensation[10].

States should ensure that CSEC victims are able to access their right to reparation through facilitating compensation claims against perpetrators. Compensation may go directly to the victim or into a general fund for CSEC victims and different systems may be appropriate in different contexts.

Recommendations

- All States should harmonise their national laws to comply with Article 8 of the OPSC.
- All States should implement the *Draft Basic Principles on the right to an effective remedy for trafficked persons*.
- All States should prioritise the implementation of the *ECOSOC Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*.
- All States should ensure that their national laws and policy are updated to ensure access to justice for victims of online child sexual abuse
- All States should ensure that child victims of prostitution are not penalised.
- All States should promote a multi-disciplinary approach to address the needs of CSEC victims.
- All CSEC victims should be provided with free legal advice and representation. The child should be able to choose his/her representative according to his/her evolving capacity.
- States should address gaps in legislation, policies and services to protect children who are vulnerable or victimised as a result of migration.
- All legal professionals including judges, magistrates, court officials and lawyers should receive mandatory training on children's rights, including training on how to approach CSEC cases.

[9] http://www.unodc.org/documents/human-trafficking/TIP_module13_Ebook.pdf, p.6.
[10] Paragraph 9.